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Supreme Court, U.S.

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# In the Supreme Court of the United States

OCTOBER TERM, 1970

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No. 325

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LOUIS A. NEGRE

VS.

STANLEY R. LARSEN, ET AL.

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On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

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**Brief of the American Friends  
Service Committee—Amicus Curiae**

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### CONSENT OF PARTIES

Petitioner has consented to the filing of this brief amicus curiae by the American Friends Service Committee. We also have been informed by the office of the Solicitor General that there is no opposition to our filing of this brief.

### INTEREST OF AMICUS

In 1917 a small group of Quakers formed a committee to provide alternate service for conscientious objectors to military service in World War I. From that committee came

the American Friends Service Committee (AFSC). Today, the AFSC engages in a wide variety of programs expressing the concerns of the greater community of the Religious Society of Friends. Peace education, opposing war and conscription and for international cooperation, long has been one of its main activities.

In October, 1968, delegates from Friends Yearly Meetings, the AFSC and other Quaker organizations met in Richmond, Indiana, and issued a declaration which summarized the burden which Friends feel under the present system of conscription:

"We call on Friends everywhere to recognize the oppressive burden of militarism and conscription. We acknowledge our complicity in these evils in ways sometimes silent and subtle, at times painfully apparent. We are under obligation as children of God and members of the Religious Society of Friends to break the yoke of that complicity.

"As Friends we have for many years been granted privileged status within the draft system. This has often blinded us to the evil of the draft itself, and the treatment of those not so privileged. We are grateful for all those who by resolutely resisting the draft have quickened our conscience. We are called into the community of all who suffer for their refusal to perform unconscionable acts.

"We reaffirm the 'Advices on Conscription and War' adopted at Richmond in 1948. We realize in 1968 that our testimony against conscription is strengthened by refusing to comply with the Selective Service law. We also recognize that the problem of paying war taxes has intensified; this compels us to find realistic ways to refuse to pay these taxes.

"We recognize the evil nature of all forms of conscription, and its inconsistency with the teachings and examples of Christ. Military conscription in the United

States today undergirds the aggressive foreign policies and oppressive domestic policies which rely on easy availability of military manpower. Conscription threatens the right and responsibility of every person to make decisions in matters of conscience. Friends opposing war should refuse any kind of military service; Friends opposing conscription should refuse to cooperate with the Selective Service System.

"We call for the abolition of the Selective Service System and commit ourselves to work with renewed dedication to abolish it. We shall oppose attempts to perpetuate or extend conscription, however constructive the alleged purpose, by such a system as National Service. We do not support efforts at draft reform; the issue is not equal treatment under compulsion, but freedom from compulsion.

"We recognize how difficult it is to work through these complex issues, and to bear the burden of decision and action. We hold in love and respect each member of our Society as he follows where conscience leads. We know there are spiritual resources available to those who would be faithful."

In addition, the Richmond declaration urged Friends to "set up procedures for called Meetings for Worship to share the affirmation of young men who engage in such acts of resistance as . . . disaffiliating from Selective Service or the Armed Forces."

Quakers or the Religious Society of Friends traditionally are identified as a "Peace Church". Thus, in 1651, George Fox declined to be commissioned in Cromwell's army, telling the Commonwealth Commissioners that "I lived in the virtue of that life and power that took away the occasion of all wars . . . I told them I was come into the covenant of peace which was before wars and strifes were." *London Yearly Meeting of the Society of Friends, Christian Faith*

*and Practice in the Experience of the Society of Friends*, 14:613 (1963 Ed.). In 1661, Friends declared to Charles II:

“We utterly deny all outward wars and strife and fightings with outward weapons, for any end or under any pretence whatsoever. And this is our testimony to the whole world. The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the kingdom of Christ, nor for the kingdoms of this world.” *London Yearly Meeting, Christian Faith and Practice* 14:614.

During three centuries, Friends have struggled with their loyalties to nation and to God. Some entered the armed forces even though Friends Yearly Meetings consistently have minuted their corporate opposition to war, violence and conscription. Nevertheless, of all problems facing Friends throughout their history, they have been most in agreement on the question of war and conscription. *Friends Coordinating Committee on Peace, The Peace Testimony of Friends in the Twentieth Century*, page 37.

The opposition to war of Friends reflects a concern for what violence does to the spirit of the person who uses violence as well as the conviction that human life is sacred because it is the creation of God. In 1950, Konrad Braun wrote:

“In the present situation persuasive methods and peaceful adjustment should be tried as sincerely and consistently as possible. What if they fail, as well they may, and aggression is imminent? A tragic moral dilemma seems to arise: shall we set violence against violence and defend the society to which we feel bound by duty and affection, the lives and the future of those



we love—or shall we reject violence and allow the aggressor to do his worst? This looks like the choice between two equally monstrous evils. But essentially they are not equal. According to all moral standards, and seen in the light both of love and justice, the bearing of evil is diametrically opposed to the inflicting of evil. 'It is better, if the will of God be so, that ye suffer for well doing than for evil doing' (1 Pet. 3. 17). By fighting for civilisation and precious lives we may not save but destroy them, and would most probably destroy all moral and spiritual standards of our world through the use of the weapons of mass-destruction. And on the other hand refusal to fight need not be surrender. Nevertheless, nothing can be harder than that choice.

"Those who proclaim non-violence as a political technique often suggest that, if carried through with utter self-denial and self-control, it may force the hand of an aggressor. We must be prepared for the possibility of it having no such positive effect, and of it leading to outward defeat. Whether successful or not it will bring suffering, martyrdom and death to many. And we must accept the way of the Cross not only for ourselves. If we believe in non-violence as the true way of peace and love, we must make it a principle not only of individual but of national and universal conduct. It would be too easy to take the position of people who are specially called for an absolute obedience to the law of love and to be content with remaining a small and ineffective group, while the majority of our fellow men defend themselves and, in fact, us too. Whilst respecting those who decide to fight, because they equally follow the voice of their conscience, we must endeavour to win them, or as many of them as possible, to the way of non-violence, whatever the consequences. Certainly we shall try to do so without any feeling of moral superiority. For not by proclaiming the way of love can we prove it to be right and

applicable, but only by following it to the bitter end—and we know how soon we may stumble when put to the test.” *London Yearly Meeting, Christian Faith and Practice* 14:611.

Thus, by example, Friends strive to encourage others to practice non-violence in their lives. The emphasis, however, remains with the individual: each person must rely ultimately on his own conscience in determining where to draw the line between the demands of conscience and the dictates of society.

William Penn, an early Quaker, came from a wealthy class. The fashion of his time required such men to wear a sword. Faced with the Quaker belief in non-violence, he was troubled both by the presence of his sword and by the prospect of appearing improperly dressed without it.

He asked George Fox, “What shall I do about my sword?”

George Fox’s answer, tradition has it, was: “Wear thy sword as long as thee can, William.”

Drawing on that story, a Friend in another century recalled:

“We had been talking for an hour and a half with a clergyman neighbour, and afterwards I sat by the fire and thought. He had maintained that war has not as yet been grown out of, and that God still uses it as a means of training His children. As I thought over this, old thoughts and memories awoke from sleep. I remembered the familiar words about William Penn’s sword—‘Wear it as long as thou canst’: and it seemed clear to me that if William Penn had given it up from self-interest or cowardice, or for any reason short of the ‘witness of God in his own Soul’, he would have been wrong. And then the thought extended itself from the life of one man to the life of mankind, and I remembered a sentence in the Epistle to Diognetus ‘What the soul is in the body, that Christians are in the world’.

Then I seemed to see that war cannot rightly come to an end from self-interest or cowardice or any worldly reason but only because men and women, by one and one, without waiting for the others, have become loyal to the spirit of Christ." *London Yearly Meeting, Christian Faith and Practice* 14:610.

In 1939, at the time of the British Military Training Bill, the London Yearly Meeting of Friends declared:

"We recognise that it is not in our power to define or determine another's attitude. We should not urge anyone to be either more or less uncompromising than his own conscience compels. The duty is laid upon us to help each man to make a right decision and then to help him to be faithful to it when made." *London Yearly Meeting, Christian Faith and Practice*, 14:626.

In summary, Friends historically have opposed all wars and historically have opposed conscription. In doing so, Quakers have asserted the primacy of duty to God over duty to nation. Nevertheless, in determining what responses to make to the demands of the state Friends have recognized that each man answers to his own conscience and have sought to help individuals to heed their inner voice.

#### **STATEMENT OF THE CASE**

Petitioner, a member of the United States Army who has been ordered to Vietnam, sought discharge as a conscientious objector. After a hearing, an army hearing officer acknowledged that petitioner's "religious training has been extensive" and that "he is extremely devout." The hearing officer's report stated further:

"The roots of his beliefs are religious. The real question in this case is what are those beliefs. It is not that the beliefs are not based on religious grounds." (App. 37).

Nevertheless, the hearing officer recommended that Negre's application for discharge as a conscientious objector be denied. In accordance with the teachings of the Catholic Church, Negre has expressed his conscientious objection with reference to the particular war in Vietnam, rather than to all wars (App. 38-40).

Following the hearing officer's report, the Department of Army denied Negre's application on the ground that his objection is "based upon a personal moral code which causes him to object to the war in Vietnam specifically and which disqualified him for separation on the grounds of conscientious objection." (App. 41)

The United States District Court denied Negre's petition for a writ of habeas corpus. The Court of Appeals for the Ninth Circuit affirmed, premising its decision on the fact that petitioner "objects to the war in Vietnam, not to all wars." (App. 51)

#### **SUMMARY OF ARGUMENT**

The First Amendment of the Constitution mandates that government must be neutral in religious matters. In providing for the exemption of conscientious objectors in 50 U.S.C. App. § 456(j), Congress has followed this mandate. No one religion, no particular religious creed or belief, is given a preferred status. A person who, according to the religious teaching of his church, frames his conscientious objection to war in terms of objection to the particular war for which he has been conscripted is not automatically deprived of this exemption. The fact that such a person is conscientiously opposed to a particular war does not provide a basis for concluding that he is not conscientiously opposed to all war. The fact that a conscientious objector can conceive of hypothetical wars to which he might not

object, as opposed to the actual war to which he does object, is of no significance in determining whether his beliefs are religiously formed or are a merely personal moral code.

### ARGUMENT

In the statement concerning the interest of the amicus, we have set forth certain characteristics of the peace testimony of Quakers. The National Conference of Catholic Bishops has summarized the religious duty of Catholics to obey conscience in its 1968 pastoral letter, *Human Life in Our Day*:

"Nor can it be said that such conscientious objection to war, as war is waged in our times, is entirely the result of subjective considerations and without reference to the message of the gospel and the teaching of the church; quite the contrary, frequently conscientious dissent reflects the influence of the principles which inform modern papal teaching, the Pastoral Constitution and a classical tradition of moral doctrine in the church, including, in fact, the norms for the moral evaluation of a theoretically just war.

We submit that Congress has made no distinction between the religious beliefs of Quakers and those of Catholics in exempting registrants from service for conscience sake. Indeed, to construe 50 U.S.C. Ap. § 456(j) to distinguish registrants on the basis of their religious beliefs would raise severe constitutional questions under the establishment and free exercise clauses of the First Amendment.

The Court consistently and in a variety of factual contexts, has declared that government must be neutral:

". . . in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion

and nonreligion." *Epperson v. Arkansas*, 393 U.S. 97, 103-104 (1968).

See also *Everson v. Board of Education*, 330 U.S. 1, 18 (1947); *Fowler v. State of Rhode Island*, 345 U.S. 67 (1953); *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

The constitutional wall between church and state even prevents civil courts from settling property disputes which turn upon the resolution of ecclesiastical questions. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

The Court thus far has interpreted the exemption granted by 50 U.S.C. App. § 456(j) so as to avoid First Amendment problems. In *U. S. v. Seeger*, 380 U.S. 163, 175 (1964) the Court examined the "richness and variety" of spiritual life in the United States and concluded:

"This vast panoply of beliefs reveals the magnitude of the problem which faced the Congress when it set about providing an exemption from armed service. It also emphasizes the care that Congress realised was necessary in the fashioning of an exemption which would be in keeping with its long-established policy of not picking and choosing among religious beliefs."

*Welsh v. U. S.*, 90 S.Ct. 1792 (1970) similarly avoided constitutional issues by applying *Seeger* to grant the exemption even though the registrant there interpreted his beliefs as being decidedly "non-religious". See also *Welsh v. U. S.*, 90 S. Ct. 1798 (Harlan concurring).

This case presents the question, not whether Congress distinguished between "religious" and "non-religious" persons with conscientious scruples against war, but whether Congress singled out for exemption only those registrants

whose religious convictions lead them unequivocally to oppose all wars.

The Court previously faced the problem in the context of the willingness of Jehovah's Witnesses to fight in a "theocratic war" and to battle at Armageddon. In *Sicurella v. U. S.* 348 U.S. 385, 390-391 (1954), the Court succinctly stated: "The test is not whether the registrant is opposed to all war, but whether he is opposed, on religious grounds, to *participation* in war." (Emphasis in original) The Court went on to emphasize the unlikelihood that the petitioner would ever have to engage in "real shooting wars" i.e. "actual military conflict between nations of the earth in our time".

In the case at bar, the hearing officer recommended denial of petitioner's application for discharge because in the hearing officer's opinion, Negre "is objecting to a particular war." In his application, petitioner stated that although he had his own convictions about the war in Vietnam at the time of his induction,

"Nevertheless I agreed to myself that before making any decision or taking any type of stand on the issue, I would permit myself to see and understand the Army's explanation of its reasons for violence in Vietnam. For, without getting an insight on the subject, it would be unfair for me to say anything, without really knowing the answer."

It was after Negre completed his infantry training "that I knew that if I would permit myself to go to Vietnam, I would be violating my own concepts of natural law and would be going against all that I had been taught in my religious training." (App. 11-12)

The hearing officer's recommendation noted that Catholic leaders distinguish between types of war, labeling aggres-

sive war or any act of war which is indiscriminately destructive a crime against God. The hearing officer further noted that petitioner's family had left their original home in France because of the Vietnam war and that Negre believes the Vietnam war is the kind of war which Catholic teaching defines as immoral (App. 38-39). The Court of Appeals adopted the view that because petitioner framed his conscientious objection in terms of his response to the Vietnam war, his objection was not to all wars (App. 51).

The crucial fallacy in the reasoning of the hearing Officer and the Court below is that by framing his objection within the context of the Vietnam war, Negre implies that he is willing to participate in some other wars, wars which are as real as that described by the Court in *Sicurella*. Negre has never known any real war other than the war in Vietnam. He has never expressed a willingness to fight in any other war. After satisfying himself as best he could concerning the reasons for our armed violence in Vietnam, he became satisfied that "to permit myself to go to Vietnam . . . would be going against all that I have been taught in my religious training."

The analysis adopted by the Court below misconceives the nature of religious and ethical thought among young people today. As a working party of the AFSC expressed it:

"Theologians, churchmen, and draft counselors must realize that for many young people in the religious and intellectual atmosphere of the 1960's there are no absolutist value positions, either pacifist or just war. Modern thought and expression — and particularly that of youth — is often conditioned by an existentialist or situational ethics approach that says "I will act from where I am and will believe what is necessary in relation to that action." Young people have related to nonviolence as a tactic and accepted it as a valid principle only in the situation in which it is used. There



tends to be a new morality that is suspicious of dogmatic principles and the things frequently sugared over by those principles. This is not to say that such activists are *not* nonviolent and *not* pacifists; in reality they may be the more so for emphasizing actions rather than words. And in their modest tactical use of nonviolence they often plumb far more deeply into violence as it actually resides in the governmental and economic structures of societies than do many pacifists who place their main emphasis upon visible overt violence.

"Yet in interpreting the thinking of young people today it is customary to overlook the consistency in their refusals to generalize and in their insistences upon behavioral proofs. It is customary to change — and to get them to change — what they are really saying. A young man who says, "I won't fight in Vietnam" and is dubbed by churchmen and counselors as a 'selective objector,' tends to see himself in this light. The term implies he selects one war as objectionable, that although the won't fight in this war he may well fight in another. The burden of proof is thus placed on his side rather than on that of his elders and the government, which see him as, by definition, a man who will go to some wars but not necessarily to every war. But the *state* should bear the burden of proof that a man — against his nature, against a civilized standard of his community life — should be forced to participate in a war." Education Division of the American Friends Service Committee, *The Draft?* page 32. (Emphasis in original.)

The Court in *Seeger* was mindful of the "ever broadening understanding of the modern religious community." *U. S. v. Seeger*, 380 U.S. at 180-183. Just as the concept of God continues to change in that community, the concept of man's duty to God continues to change. The language of

the statutory exemption and the Congressional policy which it embodies is certainly elastic enough to cover a sincere, religious objector, despite the fact that the doctrinal formulation which informs his conscientious convictions requires him to judge the particular war for which he is being conscripted. The statute does not require conscientious objectors to take a loyalty oath to the effect that they cannot conceive of any war in which their religious beliefs would permit participation. The statute simply and broadly exempts those persons who "by reason of religious training and belief" are "conscientiously opposed to participation in war in any form."

As Mr. Justice White pointed out in his dissent in *Welsh v. U. S.*, 90 S. Ct 1811, 1812, the congressional judgment behind that exemption may have been a purely practical one, that religious objectors are of no practical use to the military, or it may have expressed a desire to steer clear of infringing on the rights of religionists under the free exercise clause of the First Amendment. Neither policy is served by conscripting religious objectors whose church doctrines require a moral judgment concerning a particular war. The fact that petitioner had said "no" to the war in Vietnam does not provide any basis for concluding that he would say "yes" to any other war.

### CONCLUSION

We have demonstrated that the exemption accorded to conscientious objectors covers those religious objectors who conscientiously cannot participate in the war for which they have been conscripted. The phrase, "war in any form", refers to real wars. The fact that a person's religious training requires him to examine a particular war, rather than all conceivable wars, does not operate to deprive a person

of the exemption. For that reason, petitioner should be ordered discharged from the army.

Respectfully submitted,

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